

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Amendment to Rules of Practice and
Procedure

Docket No. RM2022-4

COMMENTS OF THE UNITED STATES POSTAL SERVICE
(May 26, 2022)

The Postal Service appreciates the opportunity to provide these two comments on the proposed rules that would govern motions for reconsideration of the Commission's final orders. 1) The Postal Service asks the Commission to confirm that the proposed rule is substantively identical to the rule governing motions for reconsideration in the federal courts. This understanding is certainly suggested by the language of proposed 39 C.F.R. § 3010.165(b), but other interpretations are possible, and the Commission has not explained its intention. 2) The Postal Service also suggests that the Commission extend the proposed deadline for filing a motion for reconsideration from 15 to 30 days.

First, under Federal Rule of Civil Procedure ("F.R.C.P.") 59(e), reconsideration of a final judgment is an extraordinary remedy, *Leidos v. Hellenic Republic*, 881 F.3d 213, 217 (D.C. Cir. 2018), and appropriate only when based upon an intervening change in the law, new evidence previously unavailable, or a need to correct clear error or prevent a manifest injustice. *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996); *New LifeCare Hospitals of North Carolina v. Azar*, 466 F.Supp.3d 124, 129 (D.D.C. 2020). A motion for reconsideration of a

final judgment “may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.”

Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008).

The Commission’s proposed rule requires a party moving for reconsideration of a final judgment to “allege material errors of fact or law and the relief sought,” 39 C.F.R. § 3010.165(b)(1) (proposed), and confines the circumstances in which reconsideration may be granted to “new questions raised by the determination or action ordered and upon which the moving party had no prior opportunity to submit arguments.” 39 C.F.R. § 3010.165(b)(2) (proposed).

While the standard for reconsideration under F.R.C.P. 59(e) can fairly be inferred from this language, it is possible to read it otherwise, especially as the Commission does not explicitly state the standard under the federal rule but proposes instead regulatory language apparently used by only one other federal agency. See 19 C.F.R. § 210.47 (motions for reconsideration before the U.S. International Trade Commission). That is, it is possible to read proposed § 3010.165(b) more narrowly than F.R.C.P. 59(e), for example as excluding reconsideration on the ground of correcting a clear error or preventing manifest injustice.

Therefore, the Postal Service asks the Commission to clarify that the standard for reconsideration of final judgments under its proposed rules is substantively identical to the standard under F.R.C.P. 59(e), perhaps by adding § 3010.165(b)(3) as follows:

“(2) Be confined to new questions raised by the determination or action ordered and upon which the moving party had no prior opportunity to submit arguments; or

(3) Be necessary to correct a clear error or prevent a manifest injustice.”

The standard under F.R.C.P. 59(e) is, of course, wholly unobjectionable. If, however, the Commission intends a different standard, it has not explained what that standard might be, and the Postal Service would appreciate the opportunity to comment upon it.

Second, the Commission can extend the time limit for bringing motions for reconsideration of final judgments from the proposed 15 days to 30 days without interfering with the apparent intent of the rule.

Insofar as the Commission wishes to codify that reconsidering a final judgment should happen only when matters were not, or could not have been, fully and fairly litigated, it appears that the Commission intends to limit the motions for reconsideration it receives in number, frequency, and kind and to entertain only those motions where the extraordinary remedy is appropriate. This intent may also be inferred from the Commission’s choice of a 15-day deadline in proposed § 3010.165(b) because 15 days falls at the short end of a 10-day to 30-day range in which federal agencies tend to set deadlines for filing motions for reconsideration after decision. See, for example, the following:

Agency	Deadline (days)	Rule
EPA Environmental Appeals Board	10	40 C.F.R. § 22.32
U.S. International Trade Commission	14	19 C.F.R. § 210.47
GAO Contract Appeals Board	15	4 C.F.R. § 22.21
Small Business Administration, Office of Hearings and Appeals	20	13 C.F.R. § 134.227(c)
Federal Communications Commission	30	47 C.F.R. § 1.108(a)(1), (f)
Employee Benefits Review Board (Department of Labor)	30	20 C.F.R. § 802.407(a)
National Indian Gaming Commission	30	25 C.F.R. § 581.6.

However, a 15-day deadline isn't necessary to limit motions for reconsideration in the way the Commission intends, and a 30-day limit will improve the quality of the motions that the Commission does wish to consider.

Put slightly differently, the time that a party has to file a motion for reconsideration of a final decision says nothing about the narrow and specific circumstances in which such a motion is appropriate. The best way for the Commission to ensure that motions for reconsideration are limited to those extraordinary circumstances where reconsideration is justified is to limit their scope through substantive standards—which the Commission is proposing to do—and then swiftly and succinctly dispose of those motions that do not meet those standards.

At the same time, increasing the time to file a motion for reconsideration from 15 to 30 days will give parties a more appropriate amount of time to fully brief matters that, by definition, are supported by new evidence or argument that could not have been discovered or presented before. That is, arguably, why there are 28 days given for motions for reconsideration in federal courts under

F.R.C.P. 59(e) (“A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment”) and 30 days for initiating judicial review of the Commission’s determinations. 39 U.S.C. § 3663. Given that initiation of judicial review requires merely a short, pro forma filing followed by subsequent briefing, it would be anomalous to give parties substantially less than 30 days to prepare a fully fleshed-out motion for reconsideration. Indeed, a motion for reconsideration can give the Commission an opportunity to preempt the need for full judicial review by updating or correcting its order. In this sense, administrative and judicial economy militates in favor of allowing more time for higher quality motions for reconsideration so that the Commission has a better chance of fully considering and disposing of all issues in contention.

Finally, a 30-day deadline will make little change to the status quo. While 30 days has not been a de facto rule, the Postal Service and other parties have at least observed 30 days as a reasonable, informal filing deadline in a number of cases, and there is no indication in any of them that filing 30 days after decision instead of 15 has resulted in any prejudice:

Docket No.	Title	Date of Decision	Date Reconsideration Filed	Days after Decision
ACR2021	USPS Motion for Reconsideration of Directive Regarding Bound Printed Matter Parcels	Mar. 29, 2022	Apr. 28, 2022	30
RM2020-9	United Parcel Service, Inc.’s Motion for Reconsideration of Order No. 6048	Nov. 29, 2021	Dec. 28, 2021	29
R2013R-10	USPS Motion for Reconsideration of Order No. 3047	Jan. 22, 2016	Feb. 22, 2016	31

In sum, the Commission should clarify that the bases for a motion for reconsideration are consistent with those under F.R.C.P. 59(e). The unexplained 15-day timeframe is unnecessarily restrictive, and the Commission should replace it with a 30-day timeframe for consistency with past Commission practice, federal court practice, and various other agencies' practice. A 30-day timeframe would also promote administrative economy and reduce unnecessary litigation.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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